

## **REMARKS**

Claims 20, 22-27 and 29 are pending in this application. No claims have been added. Claims 22, 24, and 25 have been cancelled. Therefore, after entry of this Amendment, claims 20, 23, and 29 will be pending.

Reconsideration of this application, in view of the foregoing amendments and the following remarks, is respectfully requested.

### ***Claim Rejections - 35 USC § 103***

Claims 20, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia-Luna-Aceves et al. (United States Publication 2002/0141479A1) in view of Shellhammer et al. (United States Patent Number 7,039,358). Applicants traverse these rejection.

In order to sustain a rejection under 35 U.S.C. §103(a) there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. To establish a *prima facie* case of obviousness based on a combination of elements disclosed in the prior art, the Examiner must articulate the basis on which it concludes that it would have been obvious to make the claimed invention. In practice, this requires that the Examiner "explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious. This entails consideration of both the "scope and content of the prior art" and "level of ordinary skill in the pertinent art" aspects of the Graham test. *IN RE LEONARD R. KAHN*, 441 F.3d 977 (Fed. Cir. 2006). Inferences and creative steps that a person of ordinary skill in the art would employ can be used. The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. *KSR INT'L CO. v. TELEFLEX INC.* 127 S. Ct. 1727 (2007).

The Examiner has failed to show that the combination of the cited references would yield predictable results, *inter alia*, Garcia-Luna-Aceves et al teaches a receiver-initiated channel-hopping. Examiner had argued in the Office Action April 13, 2006 that a master has a receiver and a thus any receiver can be a Master. In current Office Action, Examiner states in a conclusionary statement that node x in Garcia-Luna-Aceves et al. is a master device without further showing any master functionality in Garcia-Luna-Aceves et al.

Examiner has provided a teaching of master-slave protocol in the pending Office Action. Applicants have amended the claims to feature a structure frequency hopping sequence and intelligent selection thereof. The combination of the prior art fails to teach coupling an enhanced master device with a slave device and using intelligent frequency hopping to select the original hopping sequence or a repeated channel adaptive hopping sequence depending on if the slave device is enhanced or legacy.

Applicants fail to see how the combination of art can be used to articulate a predictable use of prior art elements according to their established functions as required to establish a *prima facie* case of obviousness under the standards articulated by the Supreme Court in *KSR INT'L CO. v. TELEFLEX INC.* 127 S. Ct. 1727 (2007).

### ***Claim Rejections - 35 USC § 102***

Claims 26, 27, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Garcia-Luna-Aceves et al. (US Pub 2002/0141479 A1). Applicants respectfully traverse these rejections.

For the rejections to be sustainable, it is fundamental that “each and every element as set forth in the claim be found, either expressly or inherently described, in a single prior art reference.” Verdegall Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See also, Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989), where the court

states, "The identical invention must be shown in as complete detail as is contained in the ... claim".

Furthermore, "all words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Thus, Anticipation requires the disclosure of each and every element of the claim arranged as in the claim—not in isolation. When the claimed invention is not identically disclosed in a reference, and instead requires picking and choosing among a number of different options disclosed by the reference, then the reference does not anticipate. *Mendenhall v. Astec Indus.*, 1988 U.S. Dist., 13 U.S.P.Q.2d 1913, 1928 (Tenn. 1988), aff'd, 13 entered by U.S.P.Q.2d 1956 (Fed. Cir. 1989). *Akzo N.V. v. International Trade Commission*, 808 F.2d 1471, 1480 (Fed. Cir. 1986), cert. denied, 482 U.S. 909, 107 S. Ct. 2490, 96 L. Ed. 2d 382 (1987); *In re Arkley*, 59 C.C.P.A. 804, 455 F.2d 586, 587-88 (CCPA 1972).

Applicants have amended the claims to have the limitation of that the slave device configured to select a channel from a repeated channel adaptive hopping sequence if the slave device is an enhanced slave device or a channel from the original hopping sequence if the slave device is a legacy slave device. These elements are not found in Garcia-Luna-Aceves et al.

. In light of the above, it is respectfully submitted that the present application is in condition for allowance, and notice to that effect is respectfully requested.

While it is believed that the instant response places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner contact the undersigned in order to expeditiously resolve any outstanding issues.

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